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FAX NO. 916 658 8240

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August 7, 2001

July 24, 2001

City Opposition To SB 910 (Dunn)

To: All City Managers, City Clerks in non-manager Cities, and Council Members
From: Dan Carrigg, Legislative Representative, League of California Cities
Phone: (916) 658-8222 Fax: (916) 658-8240 Email: carriggd@cacities.org

Re: SB 910 (Dunn) Housing Elements, Fines, Penalties, and Litigation.

This is intended to provide you with a brief update on the status of SB 910, and to urge your continued opposition to the bill. **Current Status:** SB 910 has been put on an August timeline, which means that it could be heard in late-August after the legislators return from their summer break. The necessary rule waivers have been granted, so this bill must be closely watched. Assemblyman Alan Lowenthal, Chair of the Assembly Housing Committee, and Patricia Wiggins, Chair of the Assembly Local Government Committee, convened a series of meetings of stakeholders for discussions on comprehensive reforms to the housing element process. The first meeting on housing element reform was held on Thursday, July 12, in Sacramento, with future meetings scheduled on a weekly basis. Since the initial meeting, due to conflicts with the state budget stalemate, those discussions have slowed, and it is not quite clear what the schedule for housing element discussions will be.

The League will be active in any discussions. At the top of the League's agenda are incentive proposals that focus on actual housing production, reforming the RHNA process, and making many improvements to the HCD housing element review process. The discussions may also explore housing element enforcement provisions, but any consideration of additional enforcement provisions must take place in conjunction with significant reforms.

Next Steps For Cities To Take: Although the slowing of the legislation and the commencement of broader discussions is a positive step, it is critical that cities continue to heavily lobby their legislators to vote against SB 910, because there is always the possibility that there will be an effort to force the measure through the Assembly in August.

During the legislative summer break, the League requests city officials to keep the pressure on their legislators to not vote for SB 910, and resist any effort to jam the bill in August. Below are some suggested actions for cities to take:

- 1) Ask your legislator to support the housing element working group's efforts to develop comprehensive reforms to the housing element process advocated by the League, CSAC, the American Planning Associations, and councils of governments.
- 2) Invite your legislator to tour some housing in your community during their summer break. Remind your legislator of what your community is already doing for housing, the obstacles you face, and how suing, fining, and penalizing your community, and putting state plan reviewers in charge of housing in your communities is not a constructive solution to housing problems. Also point out that the Budget again contains cuts for local government as well as housing programs, with no return of local property tax dollars.
- 3) Talk with your local press about the housing problems your city faces and the tools you need from the state to help produce more affordable housing: return of local property taxes, ongoing subsidies for building affordable housing, and other incentives which will produce more housing. Make it clear that the state must be a partner with local government, not an adversary.
- 4) Plan to send a representative of your city to Sacramento to testify against SB 910, if the proponents attempt to jam a penalty bill without significant reforms. According to the Assembly Local Government Committee, the likely date for hearing the bill would be August 22nd. If the bill passes the Local Government Committee, it will be heard next on August 23rd, in the Assembly Housing Committee.

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- A copy of the League's most recent opposition letter is available at:
<http://www.cacities.org/userfiles/godoc/2423%2E910alg%2Dhcd%2EDOC>
- A sample opposition letter can be obtained at:
<http://www.cacities.org/userfiles/godoc/2524%2ESB910sample4%2Edoc>

Please see that the League receives a copy of any letters of opposition your city sends. For a copy of the bill and its status, visit: http://info.sen.ca.gov/cgi-bin/postquery?bill_number=sb_910&sess=CUR&house=B&site=sen. For the Assembly's roster, visit: <http://www.assembly.ca.gov/clerk/district.asp>. For the Senate's roster, visit: <http://www.sen.ca.gov/~newsen/senators/roster.htm>.

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SB 910 (Dunn) Sample Oppose Letter

July XX, 2001

Senator Joe Dunn
State Capitol, Room 2080
Sacramento, CA 95814

RE: **SB 910 (Dunn). Housing Elements. Fines, Penalties, and Lawsuits/State Seizure of Gas Tax.**
Notice of Opposition

Dear Senator Dunn:

We regret to inform you that the City of _____ **OPPOSES** your **SB 910**, as amended May 24, 2001. In brief, this measure establishes a legal rebuttable presumption of nonvalidity for a housing element if a plan reviewer at the Department of Housing and Community Development (HCD) has found that the element does not substantially comply with state law, requires a court to levy a penalty up to \$1.5 million per city or county, in addition to authorizing attorney's fees and costs, and requires the Controller to seize local gas tax funds. This approach is both punitive and offensive. Furthermore, the proposed scheme in this legislation of requiring the Controller to seize local gas tax revenues appears to be unconstitutional.

Under existing law, a local government must submit a draft housing element to HCD for review, but retains the discretion to either incorporate the changes suggested by the HCD plan reviewer, or adopt their element without the state plan reviewer's recommendations with findings as to why the changes are not incorporated, and why the jurisdiction believes that its housing element is in substantial compliance with state law. Under either circumstance, the housing element is considered to be in legal and in compliance with the law unless a court rules otherwise. Thus, this measure would fine and penalize communities which self-certify their housing elements, even though this option is clearly authorized by the law, section 65585(f)(2), Government Code.

This measure shifts the legal standard for housing element review from innocent until proven guilty to guilty until proven innocent, by declaring that a local housing element is presumed invalid if a local government fails to comply with every whim of the state plan reviewer. This change has the effect of elevating the opinion a state plan reviewer above the opinion of a judge, and causing serious consequences for both local governments and developers, because any local decision made by the local government--issuing building permits, approving subdivision maps, adoption of zoning ordinances, approving development projects--based upon that general plan become subject to legal challenges. Furthermore, this bill treats local elected officials as criminals by imposing up to \$1.5 million in penalties, and would reduce our scarce local subventions the portion of the state's gas tax that is currently allocated directly to the a local government if our housing element is found out of compliance by a state plan reviewer.

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The Controller would be required to seize and hold hostage our scarce transportation dollars if we choose not to incorporate the changes that the HCD plan reviewer suggests, reducing the portion of the state's gas tax that is allocated directly to our communities. This is nothing less than a direct usurpation of local land use authority and revenues by the state. Moreover, the state seizure of local gas taxes appears unconstitutional, based upon Section 3, of Article XIX of the State Constitution which requires *"Any future statutory revisions shall provide for the allocation of these revenues, together with other similar revenues, in a manner which gives equal consideration to the transportation needs of all areas of the state and all segments of the population consistent with the orderly achievement of adopted local, regional, and statewide goals for ground transportation in local general plans, regional transportation plans, and the California Transportation Plan."* Thus, the people of the state have made clear that local gas tax funds are intended for local transportation projects, not to be held hostage by the state as leverage on other issues.

We completely object to this measure which attempts to cast local governments and their locally elected officials in a very negative light, such that they must be fined, sued, forced, and threatened into compliance with the state over a state supervised process. We care deeply about our communities and the many needs of our constituents. Due to the lack of state-local fiscal reform, even after years of state surpluses, we struggle to meet the full range of needs for our community with limited property tax resources, and attempt to provide housing for our citizens with little help from the state or federal level to meet the affordable housing needs of our citizens. Therefore, we are offended by this measure and its focus on fines, penalties, threats from the state over the review of our local housing element by state officials, who may never have even been to our communities, and may care little about the variety or complexity of the issues that we balance every day. Furthermore, this legislation ignores the already substantial powers and "teeth" of a Court, under section 65755 of the Government Code, to suspend a local government's authority to approve building permits, zoning changes, and subdivision maps until an invalid general plan, or housing element, is brought into compliance with the law.

Include a paragraph which explains local efforts to support housing in your city, as well as any comments on your city's experience with the housing element process.

Addressing this state's many housing needs requires a productive working relationship between local governments and the state, and a discussion that must involve the full scope of issues which affect housing production. This is the wrong approach.

Sincerely,

XXXXXX
City Official
City of

cc: Members and Consultant, Assembly Housing and Community Development Committee
Members and Consultant, Assembly Local Government Committee
YOUR SENATE and ASSEMBLY MEMBERS (Call Them As Well)

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Julie Bornstein, Director, Department of Housing and Community Development
Mike Gotch, Legislative Secretary, Governor's Office
League of California Cities

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July 18, 2001

League of California Cities
 California State Association of Counties
 California Police Chiefs Association
 California Association of Councils of Governments
 San Joaquin Council of Governments
 Southern California Association of Governments
 Tustin Chamber of Commerce

Orange County Division, Inland Empire Division, Los Angeles County Division, League of California Cities; Counties of: El Dorado, Orange, Los Angeles, Riverside, Sacramento, San Bernardino, San Benito, Santa Cruz, and Yolo; Cities of: Adelanto, Alameda, Albany, Anaheim, Antioch, Apple Valley, Arcadia, Arcata, Arroyo Grande, Atascadero, Atwater, Bakersfield, Banning, Barstow, Bell, Bell Gardens, Belmont, Benicia, Beverly Hills, Big Bear Lake, Brawley, Brea, Buena Park, Burbank, Burlingame, Calistoga, Camarillo, Campbell, Carlsbad, Carpinteria, Cerritos, Chico, Chino, Chino Hills, Chowchilla, Clayton, Clearlake, Clovis, Colfax, Commerce, Concord, Corning, Corcoran, Corona, Coronado, Corte Madera, Costa Mesa, Culver City, Cypress, Danville, Delano, Del Mar, Desert Hot Springs, Diamond Bar, Dixon, Downey, Dublin, El Cajon, Encinitas, Emeryville, Escondido, Fairfield, Firebaugh, Fontana, Fortuna, Foster City, Fountain Valley, Fowler, Fremont, Fullerton, Galt, Gardena, Garden Grove, Gilroy, Glendale, Glendora, Gonzales, Grass Valley, Grover Beach, Gustine, Hayward, Hemet, Hermosa Beach, Highland, Hollister, Huntington Beach, Huntington Park, Indian Wells, Indio, Inglewood, Irwindale, La Cañada Flintridge, La Habra, La Mirada, La Palma, La Quinta, Lafayette, Laguna Beach, Laguna Hills, Lake Forest, Lakewood, Lancaster, Larkspur, Lawndale, Lemon Grove, Lincoln, Livermore, Livingston, Loma Linda, Lomita, Lompoc, Long Beach, Los Alamitos, Los Altos, Los Angeles, Los Banos, Los Gatos, Lynwood, Madera, Malibu, Mammoth Lake, Manhattan Beach, Manteca, Marina, Martinez, Marysville, Maywood, Menlo Park, Merced, Mill Valley, Millbrae, Mission Viejo, Modesto, Monrovia, Monterey, Monterey Park, Moorpark, Moraga, Moreno Valley, Morgan Hill, Mountain View, Napa, National City, Newport Beach, Norco, Norwalk, Novato, Ojai, Ontario, Orange, Orland, Pacific Grove, Palmdale, Palos Verdes Estates, Paradise, Paramount, Parlier, Pasadena, Paso Robles, Pismo Beach, Placentia, Pleasant Hill, Pomona, Port Hueneme, Poway, Rancho Cucamonga, Rancho Santa Margarita, Red Bluff, Redondo Beach, Reedley, Rialto, Ridgecrest, Ripon, Riverbank, Riverside, Rocklin, Rohnert Park, Rolling Hills Estates, Rosemead, Roseville, Salinas, San Bernardino, San Bruno, San Carlos, San Clemente, San Diego, San Dimas, San Gabriel, San Jacinto, San Juan Bautista, San Juan Capistrano, San Leandro, San Luis Obispo, San Marcos, San Marino, San Mateo, San Pablo, Sand City, Santa Ana, Santa Barbara, Santa Clara, Santa Clarita, Santa Cruz, Santa Fe Springs, Santa Maria, Santa Monica, Santa Rosa, Saratoga, Scotts Valley, Seal Beach, Seaside, Sebastopol, Selma, Signal Hill, Simi Valley, South Gate, South Lake Tahoe, St. Helena, Stanton, Stockton, Sunnyvale, Susanville, Taft, Temecula, Temple City, Thousand Oaks, Torrance, Tustin, Ukiah, Vacaville, Ventura, Victorville, Villa Park, Vista, Walnut, Wasco, Waterford, Westlake Village, Westminster, Windsor, Woodland, Yountville, Yucaipa, and Yuba City

TO: Members and Consultant, Assembly Local Government Committee
 Members and Consultant, Assembly Housing and Community Development Committee

FROM: Above Listed Organizations and Local Governments

REQUEST FOR "NO" VOTE ON SB 910 (Dunn)

Request for "NO" Vote: The above organizations are **OPPOSED** to **SB 910** (Dunn), and urge your "**No**" **Vote** when this measure is heard in committee. In brief, this measure establishes a legal rebuttable presumption of nonvalidity for a housing element if a plan reviewer at the Department of Housing and Community Development (HCD) has found that the element does not substantially comply with state law. It requires a court to levy a penalty up to \$1.5 million per city or county, in addition to authorizing attorney's fees and costs, and requires the Controller to seize local gas tax funds. This approach is both punitive and offensive. Furthermore, the proposed scheme in this legislation of requiring the Controller to seize local gas tax revenues appears to be unconstitutional.

Existing Law: Under existing law, a local government must submit a draft housing element to HCD for review, but retains the discretion to either incorporate the changes suggested by the HCD plan reviewer, or adopt their element without the state plan reviewer's recommendations with findings as to why the

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changes are not incorporated, and why the jurisdiction believes that its housing element is in substantial compliance with state law. Under either circumstance, the housing element is considered to be legal and in compliance with the law unless a court rules otherwise. Thus, SB 910 would fine and penalize communities which self-certify their housing elements, even though this option is clearly authorized by the law, section 65585(f)(2), Government Code. This provision also operates as a state mandate on local governments, by fining and penalizing a community which chooses to self-certify its element.

Housing Production vs. Housing Element: Furthermore, there is little established nexus between approval of state plan reviewers and housing production. For instance, in Alameda County, the City of Albany which has produced an average of six new units per year is deemed "in compliance" by state plan reviewers, while the City of Dublin, which has averaged 867 units per year over the past three years is viewed as "out of compliance." In San Joaquin County, the cities of Tracy, 1249 units; Manteca, 504 units; Lodi, 286 units are all deemed "out of compliance" by state plan reviewers. However, in San Mateo County, the cities of Foster City, 1 units; and Portola Valley, 9 units; are both deemed "in compliance." This measure simply enshrines this existing flawed process without any effort to actually review and comprehend the underlying issues and realities which affect housing production.

Guilty Until Proven Innocent: This measure shifts the legal standard for housing element review from innocent until proven guilty to guilty until proven innocent, by declaring that a local housing element is presumed invalid if a local government fails to comply with every whim of the state plan reviewer. This change has the effect of elevating the opinion a state plan reviewer above the opinion of a judge, and causing serious consequences for both local governments and developers, because any local decision made by the local government--issuing building permits, approving subdivision maps, adoption of zoning ordinances, approving development projects--based upon that general plan become subject to legal challenges. These legal challenges can have the effect of placing the local zoning of a community in the hands of a state plan reviewer and a judge, instead of the elected legislative body. Furthermore, this bill treats local elected officials as criminals by imposing up to \$1.5 million in penalties.

No Housing Element--No Roads: The Controller would be required to seize and hold hostage scarce transportation dollars if a city chooses not to incorporate the changes that the HCD plan reviewer suggests. This is nothing less than a direct usurpation of local land use authority and revenues by the state. Moreover, the state seizure of local gas taxes appears unconstitutional, based upon Section 3, of Article XIX of the State Constitution which requires *"Any future statutory revisions shall provide for the allocation of these revenues, together with other similar revenues, in a manner which gives equal consideration to the transportation needs of all areas of the state and all segments of the population consistent with the orderly achievement of adopted local, regional, and statewide goals for ground transportation in local general plans, regional transportation plans, and the California Transportation Plan."* Thus, the people of the state have made clear that local gas tax funds are intended for local transportation projects, not to be held hostage by the state as leverage on other issues.

Conclusion: We object to this measure and are offended by its focus on fines, penalties, threats from the state over the review of our local housing element by state officials, who may never have even been to our communities, and may care little about the variety or complexity of the issues that we balance every day. Furthermore, this legislation ignores the already substantial powers and "teeth" of a Court, under section 65755 of the Government Code, to suspend a local government's authority to approve building permits, zoning changes, and subdivision maps until an invalid general plan, or housing element, is brought into compliance with the law.

Addressing this state's many housing needs requires a productive working relationship between local governments and the state, and a discussion that must involve the full scope of issues which affect housing production. This is the wrong approach. If you have any questions, or if we can be of any assistance, please call Daniel Carrigg, of the League, at 916/658-8222; DeAnn Baker, of CSAC, at 916/327-7500; or Rusty Selix of CalCOG, at 916/557-1171.

cc: Mike Gotch, Legislative Secretary, Governor's Office